

**KNIGHT
FIRST AMENDMENT
INSTITUTE**

at Columbia University

March 16, 2018

Via ECF and by Fax

The Honorable Naomi Reice Buchwald
United States District Court for the
Southern District of New York
500 Pearl Street, Room 2270
New York, NY 10007-1312

Re: *Knight First Amendment Institute, et al. v. Trump, et al.*, Case No. 17-CV-5205 (NRB)

Dear Judge Buchwald,

Because of an exchange between the Court and counsel for the Government during last Thursday's oral argument in the above-captioned matter, counsel for Plaintiffs revisited the D.C. Circuit's decision in *Swan v. Clinton*, 100 F.3d 973 (D.C. Cir. 1996), and their characterization of that decision in Plaintiffs' summary judgment briefing. In at least two instances, Plaintiffs stated that the court in *Swan* had ordered injunctive relief against the President's subordinates in lieu of the President. Pls.' Cross-Mot. & Opp'n Br. at 31 n.13, ECF No. 43; Pls.' Reply Br. at 14, ECF No. 56. In fact, although the court held that it had jurisdiction to grant such relief, *Swan*, 100 F.3d at 979–81, it ultimately ruled against the plaintiff on the merits, *id.* at 988.

As counsel for Plaintiffs stated at oral argument, *Swan* is relevant here because it makes clear that the Court has authority to order subordinate officials to remedy injuries stemming from the President's actions. The other cases counsel cited during argument further clarify that, for purposes of standing to obtain injunctive relief against individuals sued in their official capacities, the relevant question is whether those individuals are in a position to carry out the ordered relief. See *Parkell v. Danberg*, 833 F.3d 313, 332 (3d Cir. 2016); *Hartmann v. Cal. Dep't of Corr. & Rehab.*, 707 F.3d 1114, 1127 (9th Cir. 2013); *Luckey v. Harris*, 860 F.2d 1012, 1015 (11th Cir. 1988).

Respectfully,

/s/ Jameel Jaffer

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